

Condo Smarts

Headline: How do we know if a bylaw is enforceable?

Topic: Bylaws

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Dear Tony: Our strata council have been working on a new set of updated bylaws that would replace our many years of odds and ends that we have adopted. Our bylaws are in a bit of a mess and we decided to consolidate them into one set and will have the owners approve them at our AGM in September. In the process of looking at our ancient bylaws, a number of questions have come up about whether a bylaw is actually something we could enforce or not. For example, one of our bylaws demands that owners must provide copies of their insurance policies of their strata lots to the strata corporation, but we have never actually collected them and only half of our owners have insurance, so how could we collect something that doesn't exist? We also have bylaws that leave the discretion of the conditions to the strata council. One of the bylaws deals with pets. The bylaw reads that pets are permitted if an owner makes an application to the council and the council decide the pet is acceptable. How could we possibly say no and defend ourselves? We would appreciate some sort of check list that would help us evaluate the bylaws.

Kendra Y.

Dear Kendra: The *Strata Property Act* requires that strata corporations must have bylaws which essentially regulate the use and enjoyment of property, the general administration of the strata, the collection and payment of fees, and the general governance of the council and owners at council, annual and special general meetings. The standard bylaws of the Act are a good starting place for every template as they provide a solid framework for operations and have a tested enforcement capacity, but there are many bylaws that strata corporations adopt that are subject to the limitations of the Act, the Human Rights Code and any other enactment of law.

First start with the order of authority for governance. At the top starts the Canadian Charter of Rights and Freedoms, next are Federal laws such as the criminal code, then provincial laws, including the *Strata Property Act*, the *Real Estate Services Act* and the Human Rights Code, then local government bylaws, followed by any covenants, easements or land use restrictions that may be registered against your property and then your bylaws and finally the rules of the strata. Your strata bylaws must comply with a daunting legislative body. That test alone gives us a sense of the landscape of technical and legal information that has to be considered in the adoption of new bylaws.

Also look at what's permitted and what is not permitted. The *Strata Property Act* contains provisions where specific bylaws or conditions may or may not be considered. For example, the strata may adopt a bylaw that limits rentals and must include a procedure for the administration of the bylaw, but specifically prohibits screening of tenants or the inclusion of exemptions into the rental bylaw count.

Stay away from bylaws that restrict access to the property or accommodation to the extent that discrimination may be the result. A bylaw that prohibits pets cannot be applied to pets that are exempt under the *Guide Animal Act*.

With the approach of the Civil Resolution Tribunal there will be a significant increase in challenges to the enforceability of many strata bylaws, so this is a critical time period to get your bylaws cleaned up and have a legal review on the bylaws before you consider a meeting. Currently, a strata owner would be required to commence an arbitration proceeding or proceed with an application to the Supreme Court of BC, all of which is costly and takes time. Once the Tribunal is up and running, owners, tenants and occupants will be able to

challenge any of the strata bylaws for a small cost within a short window of time, all from the convenience of their smart phone, lap top or tablet.